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June 30, 2011

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, D.C. 20423-0001

**RE: Finance Docket No. 35498, Adrian & Blissfield
Rail Road Company – Continuance- in-Control--Charlotte
Southern Railroad Company, Detroit Connecting Railroad
Company, and Lapeer Industrial Railroad Company**

Dear Ms. Brown:

On behalf of the Adrian & Blissfield Rail Road Company ("ADBF"), I am e-filing a copy of its Reply Comments due July 5, 2011, to one Public Comment previously submitted in this proceeding on June 17, 2011. To the best of ADBF's knowledge, no other party has filed any comments opposing ADBF's application for continuance-in-control. Under the Board's scheduling order dated May 18, 2011, ADBF's comments are due July 5, 2011.

Sincerely yours,


John D. Heffner

Enclosure

ADBF-2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET FD 35498

**ADRIAN & BLISSFIELD RAIL ROAD COMPANY,
-- CONTINUANCE-IN-CONTROL--
CHARLOTTE SOUTHERN RAILROAD COMPANY,
DETROIT CONNECTING RAILROAD COMPANY, AND
LAPEER INDUSTRIAL RAILROAD COMPANY**

**APPLICATION FOR AUTHORITY
UNDER 49 U.S.C. 11323 *Et Al***

REPLY TO PUBLIC COMMENTS

Submitted By:

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3333

Counsel for Petitioner

Due: July 5, 2011

ADBF-2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET FD 35498

**ADRIAN & BLISSFIELD RAIL ROAD COMPANY,
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**I.
INTRODUCTION**

Pursuant to the procedural schedule issued by the Board on May 18, 2011, Applicant Adrian & Blissfield Rail Road Company ("ADBF") files this reply to the comments submitted in the above-captioned proceeding by the *sole* protestant and commenter Dale R. Pape ("Pape"). ADBF requests that the Board promptly grant its request to continue in control of three small short line railroads, Charlotte Southern Railroad Company ("CHS"), Detroit Connecting Railroad Company ("DCON"), and Lapeer Industrial Railroad Company ("LIRR"), inasmuch as Mr. Pape has not alleged, let alone shown, that the transaction will result in adverse

competitive impacts that are both "likely" and "substantial."

II. STATEMENT OF FACTS

This proceeding involves an application filed by ADBF at the request of the Board on April 18, 2011, pursuant to 49 U.S.C. 11323(a) (3) and 49 CFR 1180.4(c), to cure its inadvertent but unauthorized acquisition of control of these three small railroads. On May 18, 2011, the Board served an order accepting ADBF's application for processing, finding the transaction a "minor one," and setting deadlines for the submission of public comments, ADBF's response to those comments, and issuance of a final decision on the merits. Three parties filed notices of intent to participate in these proceedings: Dale R. Pape, a shareholder and former employee of ADBF, Scott C. Cole, a self-described "citizen of the State of Michigan," and Gabriel Hall, merely identified as "an individual."¹ Significantly, no rail shipper, competing railroad or motor carrier, or public agency has filed any comments in opposition.

Mr. Pape criticized ADBF for what he terms numerous false and misleading statements made by ADBF's president Mark Dobronski in his verified statement accompanying ADBF's application. More specifically, Mr. Pape identified four

¹ Mr. Hall is a former shareholder, director, and corporate officer of ADBF and now owns and manages U S Rail Corp., another short line rail carrier. Undisclosed is the fact that Mr. Pape is now a high level manager at U S Rail Corp.

examples of false and misleading information which he urged constituted grounds for rejecting this application:

- ADBF was not entitled to receive the American Short Line and Regional Railroad Association's Jake Award for Safety for 2009
- Mr. Dobronski characterized as "threats of litigation" letters that Mr. Pape wrote the ADBF board of directors criticizing his management style
- Mr. Dobronski's failure to mention the substantial time he devoted to his attempt to take over a small non-profit historical railroad
- Inadequacies in Mr. Dobronski's discussion of certain ADBF train operations in Adrian, MI

Additionally, Mr. Pape cited as a blight on Mr. Dobronski's character and ability to run a railroad his removal as a Justice of the Peace in Scottsdale, AZ, some years before.

III. PRELIMINARY MATTER

As a preliminary matter, ADBF notes that the Board's Rules of Practice at 49 CFR 1104.4(b) require that the original of each document not signed by a practitioner or an attorney must be (1) signed in ink; (2) accompanied by the signer's address, and (3) be verified, if it contains allegations of fact, under oath by the person, in whose behalf it is filed. Insofar as Mr. Pape's comments contain serious allegations as to how Mr. Dobronski has managed ADBF during the eight years he has served as ADBF's president, Mr. Pape's comments should as a minimum be verified. Accordingly, ADBF requests that they be rejected as deficient. 49 CFR 1104.10(a).

IV.
THE STATUTORY APPROVAL STANDARD

In general, all consolidation transactions including that proposed here are subject to approval under 49 U.S.C. §11323 *et seq.* §11323(a) states as relevant that the following transactions involving rail carriers providing transportation subject to the jurisdiction of the Board under this part may be carried out only with the approval and authorization of the Board:

- (1)...
- (2)...
- (3) Acquisition of control of a rail carrier by any number of rail carriers.

Inasmuch as this application involves a request by ADBF to control three additional carriers, §11323(a) (3) is implicated here. Because ADBF is a class III carrier and this transaction does not involve any class I carriers, the approval standard of §11324(d) rather than that of §11324(b) applies. As the Board has observed in a consistent and long line of cases,² it *must* approve an application that

² See, Kansas City Southern Industries, Inc., KCS Transportation Company, and The Kansas City Southern Railway Company--Control--Gateway Western Railway Company and Gateway Eastern Railway Company, FD 33311 (STB served May 1, 1997), slip op. at 4; CSX Corporation and CSX Transportation, Inc.--Control--The Indiana Rail Road Company, STB FD 32892 (STB served Nov. 7, 1996), slip op. at 3-4; Illinois Central Corporation and Illinois Central Railroad Company--Control--CCP Holdings, Inc., Chicago, Central & Pacific Railroad Company and Cedar River Railroad Company, STB FD 32858 (STB served May 14, 1996), slip op. at 3, cited in Canadian National, et al.--Control--Wisconsin Central Transp. Corp., et al., 5 S.T.B. 890, at 899-900 (2001).

does not involve more than one class I railroad unless it finds that: (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. In assessing transactions subject to §11324(d), the Board's primary focus is on whether there would be adverse competitive impacts that are both likely and substantial. If so, it also considers whether the anticompetitive impacts would outweigh the transportation benefits or could be mitigated through conditions. The Board also has the authority to consider the potential environmental effects of the transaction and to impose appropriate conditions to mitigate adverse environmental effects. *See, e.g., CSX Transportation, Inc., And Delaware And Hudson Railway Company, Inc.—Joint Use Agreement*, FD 35348, STB served October 22, 2010 and *Massachusetts Coastal Railroad, LLC-Acquisition-CSX Transportation, Inc.*, FD 35314, STB served March 29, 2010. And, even if there were to be likely and substantial anticompetitive impacts, the Board may not disapprove the transaction unless the anticompetitive impacts outweigh the benefits and cannot be mitigated through conditions. *See, Fortress Investment Group, LLC, et al.—Control—Florida East Coast Railway, LLC*, FD 35031, slip op. at 4 (STB slip op. served Sept. 28, 2007) and cases cited therein at 4.

Historically, the Board's predecessor agency the Interstate Commerce Commission considered various factors in determining whether a consolidation transaction satisfied the statutory public interest approval standard of 49 U.S.C. §§11343-44. However, with the Staggers Rail Act amendments to the former Interstate Commerce Act, Congress changed the law to limit the ICC's and now the Board's public interest review of consolidation transactions involving no more than one class I railroad to the transactions' competitive impacts. Under the revised statute, the Board has considered and consistently rejected as outside the scope of its approval jurisdiction requests for conditions addressing concerns such as track capacity for and rail freight traffic impacts on commuter rail service, track and grade crossing safety subject to regulation by other agencies, rail freight traffic impacts on the development of an adjacent airport, and rail service concerns unrelated to competition.³

In preparing this reply, ADBF has carefully reviewed Mr. Pape's allegations in the context of the pertinent case law. Nowhere does he mention or even address the competitive impacts of this transaction. His principal objections appear to fall into three broad categories: railroad safety, Mr. Dobronski's alleged "fitness" to manage ADBF, and corporate governance. In the interest of a complete record,

³ See, Canadian Pacific Railway Company, Et Al.-Control-Dakota, Minnesota & Eastern Railroad Corp., Et Al, FD 23081, STB served September 30, 2008, slip op. at ___ and Canadian National Railway Company And Grand Trunk Corporation-Control-EJ&E West Company, FD

ADBF responds briefly to each of these allegations and attaches a supporting rebuttal affidavit of its president Mark Dobronski and an affidavit by its Chief Administrative Officer, Barbara Lasater. However, it notes that Board consideration of these issues is irrelevant to the *sole* criterion for approval of this transaction: its impact on competition.

Turning to Mr. Pape's specific allegations, he first notes that ADBF was not entitled to receive the short line association's "Jake Award" for safety for 2009 because it failed to report an injury occurring in February 2009 until 2010. Mr. Dobronski checked his corporate records and spoke with his Chief Administrative Officer, Barbara Lasater, who advised that she prepared and filed the injury report with the FRA on or about April 28, 2009. *See*, Dobronski Affidavit, para. 3, Lasater Affidavit, para 4, both attached to this filing as Exhibits A and B.

What Mr. Pape neglected to note is that the FRA's Ten Year Accident/Incident Overview⁴ shows only one other accident, occurring in 2002, before Mr. Dobronski became president and during Mr. Pape's "stewardship" of the railroad as its general manager. But for the one incident in 2009, ADBF has been *accident free* during the years of Mr. Dobronski's presidency. Dobronski Affidavit at paras. 4-5. He then went on to recite a series of assertions that were also included in his comments filed in opposition to ADBF's notice of exemption

⁴ Attached as Exhibit C.

for continuance-in-control filed in FD 35253 on February 18, 2011, concerning safety practices on ADBF affiliate the Jackson & Lansing Railroad, the handling of a 71-car unit train being interchanged from ADBF to Norfolk Southern Railroad which allegedly blocked grade crossings at Adrian, MI, for 45 minutes, and the videotaping of ADBF train operations and personnel. Again, Mr. Dobronski explains that the crossing delay involved a mere 15 minutes and ADBF has always had procedures in place to accommodate emergencies when and if they arise. Dobronski Affidavit at paras. 8-10. After representing that Mr. Dobronski was removed from his former position as Scottsdale (AZ) Justice of the Peace,⁵ Mr. Pape devoted a portion of his comments to allegations about Mr. Dobronski's treatment of him as a minority shareholder of the railroad, actions occurring during ADBF shareholder meetings, and Mr. Dobronski's alleged attempts to take over a small non-profit museum. Regarding the latter, Mr. Dobronski set the record straight by explaining that ADBF wanted to purchase some real property from the Southern Michigan Railroad Society, Inc., for the purpose of establishing an interchange with Norfolk Southern Railroad. It did not seek to "take over" the organization. Dobronski Affidavit at para. 7.

The Board should regard Mr. Pape's allegations with skepticism as they are unverified in violation of the Board's rules. But regardless of their merits (or lack

⁵ In fact, Judge Dobronski retired from his position.

thereof), each of these allegations is beyond the STB's jurisdiction. Safety issues are within the exclusive jurisdiction of the Federal Railroad Administration. The moral character or "fitness" of an individual to own and operate a railroad has never been the subject of STB (or ICC) regulation or jurisdiction. Matters involving management styles and qualifications are outside the Board's jurisdiction as are issues of corporate governance. To the extent that these are legal matters at all, they are matters of state law. The Board and the ICC have long held that commercial disputes are outside the agency's expertise and jurisdiction. *Cf.*, Canadian Pacific Limited, Et Al-Purchase And Trackage Rights-Delaware & Hudson Railway Company, 7 I.C.C.2d 95, 1990 ICC Lexis 321 at 48, note 25 (ICC 1990)("It would be inappropriate for this agency to interpose itself among the parties in what is essentially a private contractual dispute.")

V. CONCLUSION

The *sole* protestant and commenter Dale R. Pape has submitted nothing on the critical issue of whether the continuance-in-control by ADBF of three small class III short line railroads in Michigan would in some way adversely affect competition. Accordingly, the statute requires the Board to issue a decision approving ADBF's inadvertent but previously unauthorized control of these carriers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John D. Heffner", with a long, sweeping horizontal line extending to the right.

John D. Heffner
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1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3333

Counsel for Petitioner

Due: July 5, 2011

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that I have mailed a copy of the "Reply to Public Comments" of the Adrian & Blissfield Rail road Company to the following parties this 30th day of June, 2011, by first class U.S. Mail:

Scott C. Cole

2700 Noon Road

Jackson, MI 49201

Gabriel D. Hall

7846 West Central Avenue

Toledo, OH 43617

Dale R. Pape

1988 West Gier Road

Adrian, MI 49221


John D. Heffner

EXHIBIT A

AFFIDAVIT OF MARK W. DOBRONSKI

State of Michigan)
) s.s. ;
County of Wayne)

MARK W. DOBRONSKI, being first duly sworn. does depose and state as follows:

1. I am the duly-elected President of Adrian & Blissfield Rail Road Company ("ADBF"), and have held that office since July 2003.

2. I have read the comments filed by Dale R. Pape, a former ADBF corporate officer/employee, in STB Finance Docket No. 35498.

3. ADBF was not one year late in filing an injury report with the Federal Railroad Administration ("FRA") regarding an employee injury which occurred on February 24, 2009. The preparation and filing of injury reports with the FRA is delegated to ADBF's Chief Administrative Officer, Barbara A. Lasater. I have reviewed the file and have found that Ms. Lasater prepared and filed the subject injury report with the FRA on or about April 28, 2009. Further, I am well aware that the FRA received the injury report as, shortly after the report was filed, I was contacted by the FRA with an inquiry regarding the filed injury report.

4. Mr. Pape's comments to the contrary notwithstanding, ADBF runs a very safe railroad. Since I was appointed President of ADBF, in 2003, the 2009 injury was the first such incident which occurred under my "watch." In fact, in 2002, the year before I became President of ADBF, and at a time when Mr. Pape was General Manager of ADBF, there was one such reportable injury under Mr. Pape's "watch." Since 2003, ADBF has seen both carloads and revenues increase, a doubling of its employee-base, and a near-tripling of its track mileage. ADBF fosters the concept of "Safety All Ways, Always" to its employees. We strive to run a safe railroad, and the 10-year statistics published by the FRA clearly show that ADBF runs a very safe railroad.

5. As far as whether ADBF was entitled to receive the ASLRRRA Jake Award for Safety for year 2009, that is a matter for the ASLRRRA to determine. ASLRRRA issued the Jake Award to ADBF (and, separately, to each of ADBF's sister railroad companies); neither ADBF, nor any of its sister railroad companies, applied for the award. If ASLRRRA believes the award was granted in error, ADBF will promptly return the award to ASLRRRA. ADBF will then have award certificates posted on its walls for the years 2003, 2004, 2005, 2006, 2007, 2008, and 2010. Mr. Pape has not alleged that ADBF was not entitled to any of those safety awards.

6. Mr. Pape makes no secret of the fact that he does not like me. I was the person responsible for firing Mr. Pape after it was discovered that he had engaged in misconduct in violation of Title VII of the Civil Rights Act of 1964. I was not hired by the ADBF Board of Directors to win a popularity contest; I was hired to be the chief executive officer of, and to lead, a railroad company. Indeed, it is significant to note that Mr. Pape was formerly a member of the ADBF Board of Directors, and in that position Mr. Pape voted to hire me, and each subsequent year (until the year that Mr. Pape was fired for his serious misconduct) Mr. Pape voted to retain me in that office. It should come as no surprise that Mr. Pape's opinions about me turned negative immediately after I fired him.

7. Mr. Pape also misrepresents events surrounding my involvement with a non-profit organization known as The Southern Michigan Railroad Society, Inc. ("SMRS"). At no time have I advocated "taking over" the SMRS, however this is the mantra some leaders of the SMRS have used to "stir up" their members. In fact, what I have done is offered, on behalf of ADBF, to purchase some of the neglected property of the SMRS to utilize as a new interchange point with Norfolk Southern Railway (NS), to rehabilitate that property, and to allow SMRS rights to use the property. Interestingly, when Mr. Pape was General Manager of ADBF, he was the one that proposed to the

ADBF Board of Directors the idea of building the proposed interchange, and further voted at an ADBF Board of Directors meeting to proceed with the concept. SMRS has been non-receptive to the idea.

8. Mr. Pape also complains about a 71-car unit grain train which ADBF operated approximately 2 years ago. Mr. Pape initially complained to the STB with a newspaper article which stated that the inbound train blocked crossings for 2 hours when, in fact, the inbound train blocked crossings for appropriately 15 minutes. Mr. Pape now complains that same inbound train blocked crossings for 45 minutes – 1 hour and 15 minutes less than he initially complained, BUT that the outbound train allegedly blocked 5 crossings for 2 hours.

9. Mr. Pape also complained to the ADBF Board of Directors that he witnessed this same train allowing 2 felons flee from pursuing Adrian police officers by running through the stopped train. At that time, our investigation revealed that Adrian Police had no record of having been in pursuit of any suspects that escaped capture because of the train.

10. Whether the train was stopped 15 minutes, 45 minutes, or 2 hours, is irrelevant. The fact is, trains do occasionally block crossings. Since that first 71-car train, ADBF now routinely handles 75-car unit trains through the subject interchange with much greater alacrity. In point of fact, when ADBF runs the unit grain trains inbound and or outbound, ADBF police officers are standing by the train directing traffic and are prepared to uncouple the train should any emergency vehicle need to pass. To date, there has been no incident where an emergency vehicle has needed to pass. Once again, ADBF takes proactive steps to ensure safety!

11. I believe that I have adequately responded to Mr. Pape's assertions. Significantly, Mr. Pape's comments are silent with regard to the statutory standard of whether ADBF's proposed transaction would result in a substantial lessening of competition, creation of a monopoly, or

restraint of trade in freight surface transportation in any region of the United States. In point of fact, this transaction would not result in a lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

Further, deponent sayeth naught.

Mark W. Dobronski

Mark W. Dobronski

Subscribed and sworn to before me
this 30th day of June, 2011.

Barbara A. Lasater

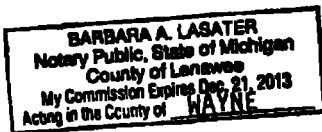


EXHIBIT B

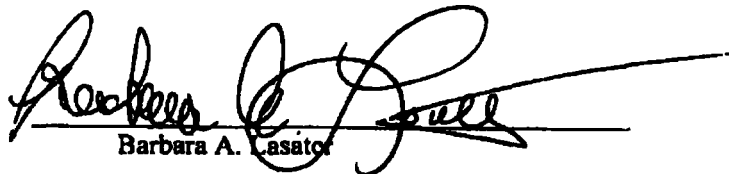
AFFIDAVIT OF BARBARA A. LASATER

State of Michigan)
) s.s.;
County of Wayne)

BARBARA A. LASATER, being first duly sworn, does depose and state as follows:

1. I am employed by Adrian & Blissfield Rail Road Company as its Chief Administrative Officer.
2. In that position, I am responsible for preparing and filing of any injury reports required by the Federal Railroad Administration (FRA).
3. I have read the comments of Dale R. Pape, a former ADBF employee, which comments were filed on June 17, 2011 in STB Finance Docket No. 35498.
4. I was responsible for the filing of the FRA Form R6180.98. *Railroad Employee Injury and/or Illness Record*, which Mr. Pape "believes" was not filed until approximately a year late. Mr. Pape's "belief" is belied by the facts. In fact, I personally prepared the subject record regarding an employee injury which occurred on February 24, 2009, and the record was filed with the FRA on or about April 28, 2009.

Further, deponent sayeth naught.


Barbara A. Lasater

Subscribed and sworn to before me
this 27th day of June, 2011.



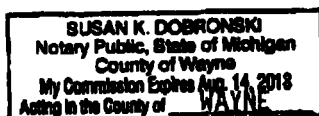


EXHIBIT C



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1.06 Ten Year Accident/Incident Overview by Railroad

ADKIAN & BLISSFIELD RR (ADBF) SUMMARY BY CALENDAR YEAR, (JAN - MAR) Run date:Wed, Jun 29, 2011

Category	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	% Change From Last Year	% Change From 2002
*** TOTAL ACCIDENTS/INCIDENTS ***	1.0							1.0				
Total a/r rate (events per million train miles)	759.9							175.7				
Total fatalities												
Total nonfatal conditions	1.0							1.0				
Employee on duty deaths												
Nonfatal FOU injuries	1.0							1.0				
Nonfatal FOU illnesses												
Total employee on duty cases	1.0							1.0				
Employee on duty rate per 200K hours	110.8							33.1				
Cases with days absent from work								1.0				
Trespasser deaths, not at HRC												
Trespasser injuries, not at HRC												
*** TRAIN ACCIDENTS ***												
Train accidents per million train miles												
-- Train accident deaths												
-- Train accident injuries												
> Human factor caused												
> Track caused												
> Motor power/equipment caused												
> Signal caused, all track types												
> Signal caused, main line track												
> Miscellaneous caused												
> Collisions												
> *** collisions on main line track												
> Derailments												
> Other types, e.g., obstructions												
Accidents with reportable damage > \$100K												
*** Percent of total												
> \$500K												
*** Percent of total												
> \$1,000,000												
*** Percent of total												
Train accidents on main line												
Rate per million train miles 1/												
Accidents on yard track												
Rate per million yard switching train miles												
HAZMAT RELEASES												
-- Cars carrying hazmat												
-- Hazmat cars damaged/derailed												
-- Cars releasing												
*** HIGHWAY-RAIL INCIDENTS ***												
Rate per million train miles												
Highway-rail incidents deaths												
Highway rail incidents injuries												
Incidents at public crossings												
*** Percent of total												
*** OTHER ACCIDENTS/INCIDENTS	1.0							1.0				
Other incidents deaths												
Other incidents injuries	1.0							1.0				
Employee hours worked	1,805,027,403,339.04	1,672,027,430,371.0	3,527,06,037.0	7,839,010,944.0							39.6	506.3
Total train miles	1,316,62,409,03,007.05	227,05,539,03,030.016	208,05,693,015,368.010	667.0							-30.6	710.6
Yard switching miles												
Passenger miles transported	1,067,01,073.01	610,01,614.01	317,01,267.0	1,649,01,156.0	1,317.0	1,517.0					15.2	42.2
Passenger miles in train cars or crossing												

Category	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	% Change From Last Year	% Change From 2002
Passengers injured in train accidents or crossing incidents
Passengers killed in other incidents
Passengers injured in other incidents

- Rate of accidents on mainline divided by total train miles - yard switching miles
- Other accidents, incidents are events other than train accidents or crossing incidents that cause physical harm to persons
- Other ACCIDENTS IS THE SUM OF TRAIN ACCIDENTS, CROSSING INCIDENTS, AND OTHER ACCIDENTS/INCIDENTS
- Other accidents/incidents are events other than train accidents or crossing incidents that cause physical harm to persons